

EX PARTE OR LATE FILED

CC 97-181

From: <Timothy_R._Fain@oa.eop.gov>
To: J7.J7(SHAIR), A4.A4 (KCONLEY, JBOLEY)
Date: 12/10/97 12:24pm
Subject: OIRA Action on 3060-0792

RECEIVED

DEC 31 1998

Message Creation Date was at 10-DEC-1997 12:24:00

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Summary

As part of a rulemaking process, the FCC has proposed a new information collection, to be administered by a third party, that is not sufficiently developed to be approved by OMB. Additionally, as currently configured, the collection does not appear to meet the "practical utility" and "burden reduction" requirements of Section 1320.9 of the Paperwork Reduction Act (PRA) nor does it propose to use statistical survey methods to reduce the burden. Finally, it is not certain that respondents will understand what they are being asked to certify and whether they will accurately respond to this collection.

The collection is past the 60 day OMB approval period. On November 15th, OIRA requested that the FCC withdraw the collection until the rules are issued as an FCC Report and Order. On December 5th, the FCC declined to withdraw the collection. OMB has not received comments from the public on this item.

OIRA will not approve the collection is filing comments accordingly. This action is "Comment Filed" rather than a "Disapproval" because the collection is part of a proposed rule. The OMB comment file for this item is 3060-0792.

Background

The FCC has adopted a rule, as part of its implementation of the Telecommunications Act of 1996, that requires certain incumbent local exchange carriers (LECs -- local phone companies such as Bell Atlantic or Ameritech) to impose two different charges on telephone subscribers. The FCC's rules require the LECs to establish different rates for so-called "primary residential" telephone lines and "secondary residential and multi-line business" telephone lines.

As part of a further notice of proposed rulemaking (FNPRM), the Commission has proposed definitions for "primary" and "secondary" residential lines and considers how these will be identified. Rates for primary and single business lines will be lower than secondary or multiple lines. The FNPRM solicits public comment on the definitions and how they should be applied. The FCC also seeks to define the term "household" as it relates to the number of telephone lines.

In accordance with the PRA, the FCC requested approval for an information collection that would allow LECs to identify and verify primary lines (once the definitions are finalized) so that they can bill their customers accordingly.

The FCC has tentatively concluded that LEC records are inadequate to distinguish between the different category of lines; thus some form of self-certification of primary lines is required. The FCC is soliciting public comment on a broad range of issues related to this self-certification process -- including the implications of a subscriber providing false information, use of universal language for the certification, how the certification should be accomplished (i.e. in bills, in separate mailings, via phone solicitation, etc.), how frequently this certification should be done, recordkeeping requirements, customer disclosure requirements, privacy etc. There are a number of related issues that the Commission has not finalized, including LEC audit and enforcement provisions.

As proposed, every LEC subscriber would certify whether their lines are primary or secondary, using an FCC definition. The Commission has proposed a burden of 12,379,000 hours and 149,141,000 respondents. If approved, this collection would represent a 50% increase in the FCC's burden hours.

OIRA Concerns

These comments, in a different format, were provided to the FCC via an email on November 15th. No response to these questions has been received.

1. A significant burden in processing these certifications will be imposed on local exchange carrier that must process the customer certifications of primary lines. This burden was not fully addressed in the submission.
2. In terms of number of respondents, this collection will be second only to the IRS's 1040 series (tax filings) and SSA's W-2. In terms of hours, it ranks among the most burdensome collections of the Federal government. The 12.4 million hours represent more than one-half of the FCC's current burden. The paperwork would also impose an ongoing yearly burden of more than 1/2 million hours for new subscribers.
3. Approving this request now (as an FNPRM) causes the FCC's burden to increase by 50% -- even while the rulemaking continues. Because of collections related to implementation of the Telecommunications Act of 1996, the FCC's will not come close to the Congressional targets for burden reduction.
4. Many questions exist related to the efficacy of the collection. For example, how many customers know what is going on with this issue? How effective will the proposed LEC information disclosure be? If given a choice to choose a designation that results in cheaper rates, aren't most going to select the lowest cost? The FCC has not addressed potential use of penalties for false filings.
5. The collection is a very broadbased approach to collect information on a narrow set of the population. The vast majority of consumers own one house/rent an apartment, etc. In most cases, the billing address is the

address where the lines are located. The number of exceptions would be quite small compared to the overall population base. It doesn't seem to make much sense to cast such a large net for a small subset of the population. Selectively asking those billed for multiple lines to designate a primary line could greatly reduce the burden.

6. Without definitions of "primary line," crafting an information collection to obtain certifications is premature. For example, multiple households in one residence -- wouldn't each person with an account receive a bill for the lines that they are using? People will claim to have multiple primary lines in a residence -- especially when they understand that there are different rate structures involved. One line in the husband's name, one in the wife's name. Are both primary? If the FCC decides that they are, the need for such a broad survey is reduced. If one is and any others are not, the assignment of charges is much more complicated. And what if there really are two "households" in one location -- and only one is eligible for the reduced rate? Who gets it?

7. The FCC has not addressed the use of statistical sampling. This would be a much less intrusive, and arguably as effective, way to determine the appropriate rate breakout as sampling the entire population by soliciting responses from all billed telephone customers. The Supporting Statement flatly states that the FCC is not looking at statistical tools. Why not?

8. The FCC is requesting public comment on potential use of definitions for "household" used by other statistical agencies. The FCC has not identified any efforts to use outside sources of expertise (Census Bureau, Bureau of Labor Statistics) for assistance in designing a less intrusive method of developing a reasonable tool for estimating/assigning the correct line charges.

9. The Supporting Statement says that the Commission may "ask customers to identify their households ... to allow two households who reside in a single residence to receive the lower SLC and PIC rate designated for primary residential use" -- but the FCC would allow "self certification." What form will the self certification take? Has the FCC fully considered the ramification of conducting what could be seen as a census? How effective would this type of question be if response is voluntary? Would potential respondents feel that such a request is intrusive? If a customer chooses not to or fails to respond to that question/certification, will they be charged higher rates?

10. What response rate does the FCC expect from either oral or written designations sent to customers? The cost to LECs and the public of responding to such a broad enumeration may exceed the estimates provided in the PRA package. For example, keying in responses from customers of 14 LECs subject to price cap rules would seem to be more than 100 hours each. Recordkeeping

costs

are also low. Won't the LECs incur printing and distribution costs of mailing the disclosure statements? Since mailing costs are driven by weight, even an additional page in a bill may add to mailing costs.

11. Why would the FCC consider an annual certification? Why not one-time?

12. What penalties would the FCC propose for those LECs and others that inappropriately handled or disclosed household information collected for determining the correct line charge? Our presumption should be that such information should not be collected if the utility of such information is outweighed by the cost of collection and the potential harm to personal privacy. The FCC is also reminded that the Privacy Act would apply to information collected by the LECs upon the direction of the FCC and that a "system of records" is defined as an individual linked to a unique identifier -- arguably what is being called for in item 13 of the Federal Register Notice 6712-01.

Recommendation

OMB recommends that the FCC rely on existing LEC records and develop tools necessary to improve that data with the least amount of burden as possible. It is premature to approve such a large and potentially intrusive collection -- until the item is further refined in the rulemaking process.